

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

ARETHA BROWN,	:	APPEAL NO. C-090036
	:	TRIAL NO. A-0805209
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
OHIO CIVIL RIGHTS COMMISSION,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiff-appellant Aretha Brown appeals the trial court’s judgment affirming a determination by defendant-appellee, the Ohio Civil Rights Commission (“the Commission”), that there was no probable cause to issue a housing-discrimination complaint against Brown’s former landlord. For the following reasons, we affirm.

Brown filed a housing-discrimination charge with the Commission, alleging that her landlord had discriminated against her because of her race and religion. After the Commission had informally investigated the complaint pursuant to R.C. 4112.05, it issued a Final Order/Letter of Determination (“the Final Order”), which stated that the Commission would not issue a complaint against Brown’s landlord because there was no probable cause that Brown’s landlord had engaged in

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

discriminatory conduct. Specifically, the Commission found that the landlord had not initially rented to Brown without a co-tenant because of Brown's poor credit history, and that the landlord had not renewed Brown's lease after the co-tenant had moved out because Brown failed to complete a new application after she had been given an opportunity to do so.

In response, Brown filed a petition for judicial review in the common pleas court, naming the Commission and her landlord as defendants. The Commission filed its record, which included a copy of Brown's complaint and the Final Order. The Commission also moved to have Brown's landlord dismissed from the proceedings, arguing the Commission was the only proper defendant. After the parties had briefed the issues and oral argument was heard, the magistrate granted the Commission's motion to dismiss Brown's landlord from the proceedings and concluded that the Commission's decision not to issue a complaint was not based on "unlawful, irrational, arbitrary, or capricious" reasons. Brown filed objections to the magistrate's decision, which were accompanied by a 442-page document that she claimed was the Commission's full investigatory file. The Commission moved to strike the document, but the trial court never ruled on its motion. Ultimately, the trial court overruled Brown's objections and entered judgment in accordance with the magistrate's decision.

On appeal, Brown now brings forth four assignments of error.

In her first and second assignments of error, Brown essentially argues that the magistrate's decision was improper because it was not based on a complete review of the Commission's decision. Specifically, Brown contends that the

magistrate should have reviewed the Commission's entire investigatory file instead of only reviewing the Commission's Final Order. We disagree.

It is well settled that when reviewing a decision by the Commission to not issue a complaint because of a lack of probable cause, the trial court "should be confined to a limited examination of the commission's decision (the final order) for the purpose of determining whether the findings of fact show sufficient justification for its decision not to issue a complaint. Unless the reviewing court finds that the findings of fact show that the commission's decision not to issue a complaint is unlawful, irrational, arbitrary or capricious, the court should not disturb the commission's action."<sup>2</sup>

A reviewing court is limited to considering only the findings of fact because there is simply no evidence for it to review: the preliminary investigation authorized by R.C. 4112.05 "does not provide for the swearing of witnesses, the taking of testimony, or the keeping of a record."<sup>3</sup>

Accordingly, we hold in this case that the magistrate conducted a proper review by only considering the findings of fact as set forth by the Commission in its Final Order, instead of also reviewing the full investigatory file that Brown had provided. Further, we conclude that the magistrate did not err in dismissing Brown's landlord as a defendant when R.C. Chapter 4112 only allowed Brown to contest a decision of the Commission. The first and second assignments of error are overruled.

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<sup>2</sup> *McCrea v. Ohio Civil Rights Comm.* (1984), 20 Ohio App.3d 314, 486 N.E.2d 1243; *Mason v. United States Fidelity & Guaranty Co.* (1987), 37 Ohio App.3d 22, 23-24, 523 N.E.2d 344.

<sup>3</sup> *Katz v. State Ed. Assn.* (Mar. 16, 1995), 10th Dist. No. 94APE06-781, citing *McCrea*, supra.

In her third and fourth assignments of error, Brown essentially contends that the trial court erred by affirming the Commission's decision not to issue a complaint against her landlord, when the Commission had failed to hold an evidentiary hearing prior to making its determination and had failed to provide a transcript for that hearing.

R.C. 4112.05(B), which governs a commission's investigation of a discrimination charge, does not provide for an evidentiary hearing to determine if there is probable cause to issue a complaint.<sup>4</sup> "Prior to the filing of a complaint, the procedure set out in the statute is informal and in the nature of an ex parte proceeding. Although the commission investigates the charge, it does not seek to receive formal evidence."<sup>5</sup> A full evidentiary hearing is generally provided only after the Commission has issued a complaint against a person or entity.<sup>6</sup>

Here, there was no evidentiary hearing because the Commission had investigated Brown's charge and had determined that there was no probable cause that Brown's landlord had engaged in unlawful discriminatory practices. Because there was no need for an evidentiary hearing, the Commission did not have a transcript of such a hearing and, thus, no duty to preserve a transcript. Accordingly, the third and fourth assignments of error are overruled.

Because the common pleas court appropriately reviewed the Commission's decision and because the court did not abuse its discretion in overruling Brown's objections to the magistrate's decision, we affirm the trial court's judgment.

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<sup>4</sup> See, generally, *Salazar v. Ohio Civil Rights Comm.* (1987), 39 Ohio App.3d 26, 30-31, 528 N.E.2d 1303.

<sup>5</sup> *McCrea*, supra at 316-317.

<sup>6</sup> See Ohio Adm.Code 4112-3-07.

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Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on November 18, 2009

per order of the Court \_\_\_\_\_.  
Presiding Judge